



U.S. Citizenship  
and Immigration  
Services

100-1

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 03 2004

IN RE:

APPLICANT

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**PUBLIC COPY**

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or  
(2) During any subsequent extension of such designation if at the time of the initial registration period:
  - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
  - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record shows that the applicant filed his Form I-821, Application for Temporary Protected Status, on July 3, 2003. The applicant indicated on the application that he entered the United States without inspection at Laredo,

Texas, on July 10, 1999. The applicant did not submit any evidence of residence or physical presence in the United States during the requisite periods with the application.

On October 10, 2003, the applicant was requested to submit evidence of nationality and evidence establishing continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 15, 1999. The applicant, in response, provided the following documentation:

1. a photocopy of the biographic pages of his Honduran passport and his Honduran national identity document (cedula), both bearing his photograph and fingerprint;
2. his California Non-Government identification card;
3. an envelope postmarked October 25, 1999, from urgente express addressed to the applicant at [REDACTED];
4. money transfer forms from urgente express showing the applicant transferred money to Honduras on August 30, 1999 and October 5, 1999;
5. a checking account statement from [REDACTED] for the period from July 29, 2003 to August 29, 2003; and,
6. the applicant's Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for the years 2000, 2001, and 2002.

The director denied the application on November 13, 2003, because the applicant had failed to establish his eligibility for TPS. It is noted that the director incorrectly stated in the Notice of Decision that the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant is a native and citizen of Honduras. Hondurans are required to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits the following evidence in an attempt to establish continuous residence and physical presence in the United States during the requisite periods:

1. an account statement from [REDACTED] showing that the applicant opened the account on August 31, 2003;
2. a generic cash receipt showing the applicant paid \$300 for rental of property at an undisclosed address on September 1, 2003;
3. an urgente express money transfer form showing the applicant transferred money to Honduras on October 16, 1999;

4. Western Union forms showing the applicant transferred money to Honduras on May 28, 2000 and October 29, 2001;
5. a Post Counseling Instructions sheet from the Department of Health Services, County of Los Angeles, Los Angeles, California, dated February 22, 2001; and,
6. medical appointment notices from King/Drew Medical Center, Outpatient Services, Los Angeles, California, for the following dates: March 30, 2001; April 5, 2001; May 11, 2001; June 29, 2001; and, September 5, 2001.

The applicant indicates on the Form I-821 that he first entered the United States on July 10, 1999. As previously stated, Hondurans are required to establish continuous residence in the United States since December 30, 1998, and continuous residence since January 9, 1999. The applicant has submitted evidence in an attempt to establish continuous residence and physical presence since August 30, 1999. Nevertheless, since the applicant did not enter the United States until July 10, 1999, he cannot establish continuous residence and physical presence during the requisite periods. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant did not file his Form I-821, Application for Temporary Protected Status, until July 3, 2003. The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The applicant has not provided any evidence to establish that he is eligible for late registration under the provisions of 8 C.F.R. § 244.2(f)(2). Therefore, the applicant has failed to establish that he is eligible for late registration, and the application also may not be approved for this reason.

It is further noted that the applicant was apprehended by United States Border Patrol officers when he initially entered the United States at Laredo, Texas, on July 10, 1999. He requested a hearing before an Immigration Judge and was released on his own recognizance pending his deportation hearing. The applicant failed to appear for his deportation hearing, and the immigration judge ordered the applicant deported in absentia on August 21, 2000. The record contains an outstanding Warrant of Deportation dated March 9, 2001.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.